

cc: to JUDGE  
HON. MARSHA SPECHMAN  
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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
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CV 01-01528 #00000006

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THOMAS R. DREILING, on behalf of  
INFOSPACE, INC.,

Plaintiff,

v.

STILES A. KELLETT, JR., an individual; and  
KELLETT PARTNERS LP, a limited  
partnership; and NAVEEN JAIN and  
ANURADHA JAIN, husband and wife, and  
their marital community, THE JAIN FAMILY  
IRREVOCABLE TRUST, THE NAVEEN JAIN  
GRAT NO. 1 TRUST, and THE ANURADHA  
JAIN GRAT NO. 1 TRUST,

Defendants,

and

INFOSPACE, INC.,

Nominal Defendant.

NO. C01-1528P

FIRST AMENDED COMPLAINT FOR  
RECOVERY OF SHORT-SWING  
PROFITS UNDER § 16(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934

A. IDENTIFICATION

1. *Plaintiff Dreiling.* Thomas R. Dreiling ("Dreiling") is an individual residing in the Western District of Washington. Plaintiff is presently an InfoSpace

1 shareholder.

2       2.     *InfoSpace, Inc.* InfoSpace is a company whose principal place of  
3 business is in King County, Washington. This suit is brought on behalf of InfoSpace to  
4 obtain relief and recovery for InfoSpace.

5       3.     *Defendant Kellett.* Stiles A. Kellett, Jr. ("Kellett") is a resident of  
6 Atlanta, Georgia. As the chairman of Kellett Investment Corporation and the general  
7 partner of defendant Kellett Partners LP, defendant Kellett has regularly transacted  
8 business in King County, Washington.

9       4.     *Defendant Kellett Partners.* Kellett Partners LP ("Kellett Partners")  
10 is a partnership that transacts business in King County, Washington. Kellett Partners  
11 and its affiliate, Kellett Investment Corporation, serve as an investment fund for later-  
12 stage, high-growth private companies. One such company, before it went public, was  
13 InfoSpace.

14       5.     *John E. Cunningham.* John E. Cunningham ("Cunningham") is the  
15 president of Kellett Investment Corporation and the general partner of Clear Fir  
16 Partners, L.P., both of which maintain offices, and conduct business, in King County  
17 Washington. Cunningham has served as a director of InfoSpace since July 1998.

18       6.     *Clear Fir Partners, L.P.* Clear Fir Partners L.P. ("Clear Fir") is a  
19 limited partnership doing business in King County, Washington. It serves as an  
20 investment fund for later-stage, high growth private companies. One such company,  
21 before it went public, was InfoSpace. On information and belief, Cunningham controls  
22 Clear Fir Partners.

23       7.     *Rufus W. Lumry III.* Rufus W. Lumry III ("Lumry") has served as  
24 a director of InfoSpace since December 1998. Lumry is the founder, principal  
25 stockholder, sole director and President of Acorn Ventures, Inc., a Washington  
26 Corporation. Acorn Ventures, Inc. is the sole stockholder of Acorn Ventures I.S., LLC, a

1 Washington Limited Liability Corporation. Lumry controls Acorn Ventures I.S., LLC  
2 and Acorn Ventures, Inc. Lumry also controls, and is the majority owner of, Internet  
3 Ventures, LLC.

4                   8.     **Acorn Ventures, Inc.** Acorn Ventures, Inc. ("Acorn Inc.") is the sole  
5 stockholder of Acorn Ventures I.S., LLC. Acorn Inc. is controlled by Lumry.

6                   9.     **Acorn Ventures I.S., LLC.** Acorn Ventures I.S., LLC ("Acorn LLC")  
7 is owned by Acorn Inc. and controlled by Lumry.

## **B. JURISDICTION AND VENUE**

25                   11. *Jurisdiction.* Jurisdiction in this Court arises under § 27 of the  
26 Securities Exchange Act of 1934, 15 U.S.C. § 78aa.

1                   12. **Venue.** Venue is proper in this Court under § 27 of the Securities  
2 Exchange Act of 1934, 15 U.S.C. § 78aa, because, *inter alia*, all the defendants transact  
3 business in this district and defendants Jain are inhabitants of this district.

4                   **C. PRELIMINARY ALLEGATIONS**

5                   13. **Plaintiff's Ownership.** Plaintiff purchased 100 shares (400 shares  
6 split-adjusted) of stock in InfoSpace on or about December 8, 1999, in his IRA account.  
7 Plaintiff has, at all times since his initial purchase to the present, been a stockholder of  
8 InfoSpace.

9                   14. **Demand.** Plaintiff made a statutory demand upon the InfoSpace  
10 board of directors on October 19, 2001. Plaintiff demanded that the InfoSpace Board of  
11 Directors recover profits realized by Jain, the Trusts, Kellett and Kellett Partners, LP. In  
12 response to this demand, InfoSpace failed to institute or maintain suit to recover profits  
13 realized by Jain, the Trusts, Kellett or Kellett Partners, LP within the statutory 60-day  
14 period. Given this failure to institute suit, plaintiff is empowered under § 16(b) of the  
15 Securities Exchange Act of 1934, 15 U.S.C. §78p(b) to bring and maintain suit on behalf  
16 on InfoSpace.

17                   15. **Adequate Representation.** Plaintiff fairly and adequately  
18 represents the interests of the non-insider shareholders of InfoSpace. Each such non-  
19 insider shareholder has an interest identical to plaintiff's—to recover, for InfoSpace, the  
20 ill-gotten profits defendants realized through violations of § 16(b) of the Securities  
21 Exchange Act of 1934, 15 U.S.C. § 78p(b).

22                   **D. FACTS**

23                   **Short-Swing Transactions**

24                   16. **Transactions.** Within periods of less than six months, the  
25 defendants engaged in numerous purchases and corresponding sales, or sales and  
26 corresponding purchases, of InfoSpace stock and/or other InfoSpace securities.

1                   17. *Failure to Report Transactions.* Defendants Kellett, Kellett  
2 Partners and Jain, including the Trusts controlled by Jain, routinely either failed to  
3 report transactions as required by the SEC or filed incomplete or inaccurate reports. As  
4 a result, some transactions subject to this action occurred more than two years ago, but  
5 were not disclosed as required under of § 16(a) of the Securities Exchange Act of 1934,  
6 15 U.S.C. § 78p(a), thereby tolling the two-year statute of limitations. Other transactions  
7 were not reported, and still have not been reported, as required by § 16(a). As to those  
8 transactions, the statute of limitations has been tolled.

9                   18. *Profit From Transactions.* The defendants personally profited  
10 from the corresponding purchases and sales or sales and purchases of InfoSpace stock  
11 and/or other InfoSpace securities.

12                   **Defendants Are Directors or Principal Stockholders**

13                   19. *10% Ownership - Kellett and Kellett Partners.* Defendants Kellett  
14 and Kellett Partners, in conjunction with Cunningham, Clear Fir, Lumry, Acorn Inc. and  
15 Acorn LLC, agreed to act together for the purpose of acquiring, holding, voting or  
16 disposing of InfoSpace stock. They combined to further a common objective in  
17 acquiring, holding, voting or disposing of InfoSpace stock. Defendants Kellett and  
18 Kellett Partners, in conjunction with Cunningham, Clear Fir, Lumry, Acorn Inc. and  
19 Acorn LLC, therefore formed a group under SEC Rule 13d-5. The beneficial ownership  
20 of this group exceeded 10% of InfoSpace's stock from December 15, 1998 through at  
21 least July 31, 2000. Examples of coordinated activity include, but are not limited to, the  
22 following:

23                   (a) On May 21, 1998, Acorn LLC, Cunningham and Kellett  
24 Partners, and they alone, coordinated the purchase of shares of stock in InfoSpace prior  
25 to its initial public offering. In conjunction with this coordinated purchase, the Acorn  
26 LLC, Cunningham and Kellett Partners, and they alone, received common stock and

1 warrants to purchase common stock at identical per share and exercise prices. Pursuant  
2 to the terms of a "Co-Sale Agreement" entered into as of May 21, 1998, between each of  
3 Acorn LLC, Cunningham and Kellett Partners, and them alone, on the one hand, and  
4 InfoSpace founder Naveen Jain, on the other, Acorn LLC, Cunningham and Kellett  
5 Partners acquired identical rights protecting their investments in InfoSpace in the event  
6 that Jain began selling his InfoSpace shares before an initial public offering by  
7 InfoSpace.

8 (b) Also on May 21, 1998, InfoSpace entered into identical  
9 "Consulting Agreements" with Acorn LLC, Cunningham and defendant Kellett  
10 Partners. No other persons or entities entered into similar agreements. Pursuant to  
11 these Consulting Agreements, Acorn LLC, Cunningham and Kellett Partners were to  
12 provide "assistance in defining the Company's business strategy, identifying and  
13 meeting with sources of financing and assisting the Company in structuring and  
14 negotiating such financing." Acorn LLC, Cunningham and defendant Kellett Partners  
15 were provided indemnification under the Consulting Agreements.

16 (c) On August 6, 1998, prior to its initial public offering,  
17 InfoSpace sold shares of stock at \$8.00 in a coordinated private placement to Acorn  
18 LLC, Cunningham and Kellett Partners, but no others.

19 (d) Acorn LLC/Lumry, Cunningham/Clear Fir and Kellett  
20 Partners have coordinated activity in the pre-initial public offering financing of other  
21 ventures as well, including imagex.com and meals.com.

22 20. **10% Ownership – Jain.** At all relevant times Jain has owned at  
23 least 10% of the outstanding shares of InfoSpace.

24 21. **Directors – Kellett and Kellett Partners.** Defendants Kellett and  
25 Kellett Partners are, and have been since July 1998, "directors" for purposes of § 16(a)  
26 and (b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(a). Defendants Kellett

1 and Kellett Partners deputized John E. Cunningham to represent their interests on  
2 InfoSpace's Board of Directors. For purposes of liability under § 16(b)(2), Kellett and  
3 Kellett Partners are "directors."

4                   22. *Director - Jain.* At all relevant times Jain has been a director of  
5 InfoSpace.

**E. CAUSE OF ACTION**

**Short-Swing Profits Generated In Violation of § 16(b) of the  
Securities Exchange Act of 1934, 15 U.S.C. § 78p(b).**

23. *Incorporation.* All allegations in the preceding paragraphs are incorporated herein.

**24. Breach.** The defendants personally profited by purchases and sales, or sales and purchases, of InfoSpace stock and/or other InfoSpace securities by engaging in such transactions within periods of time that were less than six months in duration. The defendants have violated § 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b).

25. **Remedy.** The defendants must disgorge all profits from short-swing transactions to InfoSpace, in an amount to be proven at trial.

**F. RELIEF REQUESTED**

Plaintiff respectfully requests the following relief in behalf of InfoSpace:

(a) Against the defendants, for all profits from the transactions prohibited by § 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b), in an amount to be proven at trial;

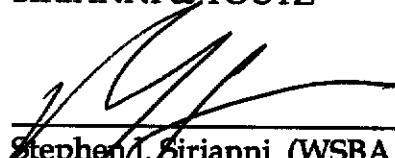
(b) An award of pre-judgment and post-judgment interest on all damages awarded, or restitution or disgorgement ordered;

(c) An award of costs and attorneys' fees against all defendants;  
and

1 (d) Any other relief, of any type or nature, that this Court deems  
2 just, equitable or necessary.

3 DATED: December 19, 2001.

4 SIRIANNI & YOUTZ  
5  
6

7   
Stephen J. Sirianni (WSBA #6957)  
Richard E. Spoonemore (WSBA #21833)  
8 Attorneys for Plaintiff

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## VERIFICATION

I, Thomas R. Dreiling, being first duly sworn, am the plaintiff in the above-captioned matter, have read the foregoing First Amended Complaint and know the contents thereof, and, to the best of my knowledge, believe the allegations set forth therein to be true.

DATED this 18 day of December, 2001, at Seattle, Washington.

Thomas Dreiling  
Thomas R. Dreiling, Plaintiff

STATE OF WASHINGTON )  
 )  
COUNTY OF KING )  
 )

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, Thomas R. Dreiling, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 18<sup>th</sup> day of December, 2001.

NOTARY PUBLIC in and for the State of Washington,  
residing at Seattle  
My commission expires: 9/04/2005

CC: TO JUDGE

1 HON. MARSHA J. PECHMAN

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4 DEC 19 2001 MR

5 AT SEATTLE  
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DEPUTY

6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 THOMAS R. DREILING, on behalf of  
INFOSPACE, INC.,

10 Plaintiff, NO. C01-1528P

11 v.

12 DECLARATION OF SERVICE

13 STILES A. KELLETT, JR., an individual; and  
14 KELLETT PARTNERS LP, a limited  
partnership.

15 Defendants.

16  
17 I declare, under penalty of perjury under the laws of the State of  
18 Washington, that on December 19, 2001, I caused a copy of 1) NOTICE OF EXPIRATION OF  
19 STAY and 2) FIRST AMENDED COMPLAINT FOR RECOVERY OF SHORT-SWING PROFITS UNDER  
20 § 16(b) OF THE SECURITIES EXCHANGE ACT OF 1934 to be served, by legal messenger, on:

21 Barry M. Kaplan  
22 PERKINS COIE LLP  
23 1201 Third Ave., Suite 4800  
24 Seattle, WA 98101-3099

25 DATED this 19<sup>th</sup> day of December, 2001, at Seattle, Washington.

26 Stacy A. Hoyer  
Declarant

SIRIANNI & YOUTZ  
701 FIFTH AVENUE, SUITE 3410  
SEATTLE, WASHINGTON 98104-7032  
(206) 223-0303

DECLARATION OF SERVICE - 1

ORIGINAL